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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,876	07/14/2003	Martin F. Bachmann	1700.0310001/BJD/SJE	4797
26111	7590	02/16/2006	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			MOSHER, MARY	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/617,876	BACHMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mary E. Mosher, Ph.D.	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 November 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,11,13-42 and 44-106 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 47,58-64 and 103-106 is/are allowed.

6) Claim(s) 1,2,11,13-42,44-46,48-57 and 65-102 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

Claims 26-28, 30, 81-83, 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims remain indefinite for reciting "a mutein" without further limitation, as discussed in the previous Office action. Although applicant argues that the claims have been amended to remove this recitation, it remains in these claims.

***Double Patenting***

Claims 32-35, 79, 81, 87-90 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claims 3 and 6 of U.S. Patent No. 6932971. The previous provisional rejection over copending Application No. 10/622,064 has been converted to an actual rejection, because the copending application has now issued.

Claims 30 and 85 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 9, 30, 33, 53 of copending Application No. 10/289456.

Claims 30 and 85 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 8, 30, 32, 53, 83, 85 of copending allowed Application No. 10/289454.

Claims 1, 2, 11, 13-42, 44-46, 48-57, 65-102 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

unpatentable over claims 4, 24, 26, 55, 81, 101, 103, 138 of copending Application No. 10/243739.

Claims 30 and 85 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9, 11 of copending Application No. 10/264267.

These are provisional obviousness-type double patenting rejections because the conflicting claims have not in fact been patented.

These rejections are made for essentially the same reasons as given in the previous Office action, because the claims in both cases recite AP205 particles and the same or similar antigen attached to the particles.

The remaining rejections of record are withdrawn in view of applicant's amendments, arguments, and declaration.

#### ***Allowable Subject Matter***

Claims 47, 58-64, 103-106 are allowed.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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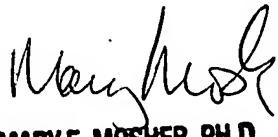
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/14/06

  
MARY E. MOSHER, PH.D.  
PRIMARY EXAMINER